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In The
Supreme Court of the United States

Justinian Rweyemamu
Petitioner,
v.
Connecticut Commission on Human Rights and Opportunities et al,
Respondents

Petition for a Writ of Certiorari to the Connecticut Appellate Court

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PETITION FOR A WRIT OF CERTIORARI

Harold H. Burbank, II, Esq.
84 N. Mountain Rd.
Canton, CT 06019
(860) 693-2687
For Petitioner

Charles Krich, Esq.
CHRO
21 Grand Street Ste.409
Hartford, CT 06106
(860) 541-3429
For CHRO

Meredith Diette, Esq.
PO Box 391
Norwich, CT 06360
(860) 889-3321
For Respondent Diocese of Norwich

Question Presented

1. Whether a federal common law or state religious freedom statute "ministerial exception" to federal and state administrative and employment discrimination statutes denies black African (Tanzanian) Catholic priests US Constitution First and Fourteenth Amendment rights to court access, and Fourteenth Amendment rights to due process and equal protection to be free of race, color, ethnicity and national origin religious workplace discrimination, where human rights agencies and reviewing courts apply the exception to deny subject matter jurisdiction and dismiss claims without factual investigation or trial of religious pretexts?

PARTIES TO THE PROCEEDING AND CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 14.1, the following list identifies all of the parties appearing here and in the court below.

The Petitioner here and in all forums below is Father Justinian Rweyemamu, a Catholic Priest from Tanzania. East Africa recruited to America by the US Catholic Church. He was employed by Catholic parishes as a priest under the authority of the Diocese of Norwich. Connecticut for about ten years prior to 2007. He arrived in America as a Tanzanian citizen and acquired US citizenship during his Connecticut work and residency.

The Respondents here and in all forums below except for review of Petitoner`s initial human rights agency complaint are the Connecticut Commission of Human Rights and Opportunities and the Diocese of Norwich. Connecticut.

Pursuant to Rule 29.6 Petitioner states that based on knowledge and belief the Diocese of Eastern Connecticut is a religious corporation.

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ON PETITION FOR A WRIT OF CERTIORARI TO THE CONNECTICUT APPELLATE COURT

PETITION FOR A WRIT OF CERTIORARI

The petitioner, Justinian Rweyemamu, respectfully petitions for a writ of certiorari to review the judgment of the Connecticut Appellate Court in this case.

OPINIONS BELOW

The opinion of the Connecticut Appellate Court is reported at 98 Conn.App. 646, 911 A.2d 319 (2006). The opinion of the Connecticut Superior Court (Appendix) is unreported. The opinion of the Connecticut Commission on Human Rights and Opportunities (Appendix) is unreported.

JURISDICTION

The judgment of the Connecticut Appellate Court was entered on December 12, 2006. A petition for Certification of Review by the Connecticut Supreme Court was denied on January 25, 2007. The jurisdiction of this Court is invoked under 28 USC Sec. 1257(3).

CONSTITUTIONAL AND STATUTORY LAW PROVISIONS

The relevant constitutional and statutory law provisions are set forth at Appendix. .

STATEMENT

In September, 2004 Petitioner, a young black African Catholic priest recruited from Tanzania, East Africa by the US Catholic church to serve US diocese lacking priests, filed a Connecticut Commission on Human Rights and Opportunities (CHRO) complaint triggering concurrent EEOC jurisdiction against Petitioner's employer of ten years, the Diocese of Norwich, Connecticut, alleging violations of his state and federal statutory employment discrimination rights to freedom from race, color, ethnicity and national origin workplace discrimination, where the Diocese hired an unqualified white secular administrator with authority to supervise Petitioner's priest employment rather than hire the Petitioner who qualified for and sought that job. The church recanted the secular hire when Petitioner filed a church complaint alleging race, color, ethnicity and national origin employment discrimination and then retaliated against Petitioner by forcibly removing him and

his property from his rectory, cutting off his pay and medical benefits, humiliating him in public meetings, and other draconian sanctions.

On October 4, 2004 CHRO issued a preliminary decision denying Petitioner subject matter jurisdiction citing a US Constitution First Amendment "free exercise clause" based federal common law "ministerial exception" to employment discrimination laws. Petitioner immediately challenged the exception by asserting US Constitution First and Fourteenth Amendment rights to court access and due process and equal protection during CHRO's pre-final decision comment period. His October 19, 2004 comment letter to CHRO manager James M. Flynn stated that CHRO had no right to rule on the case without thorough factual investigation and due process hearings. See Flynn letter, p. 1, Appendix A. The letter cited Gonzales v Roman CatholicArchbishop, 280 US 1 (1929) for principles that only absent fraud, collusion or arbitrariness do church decisions affecting civil rights become conclusive before secular courts, and that hearings are required to test for fraud, collusion and arbitrariness alleged in Petitioner's complaint. Flynn letter infra, p. 2. The letter argued that church employment discrimination cases always require inquiry into the sincerity of the religious institution's beliefs justifying exceptions, and that the government's compelling interest in ending employment discrimination has been held to outweigh incidental impacts on religious practices and beliefs. EEOC v. Freemont Christian School, 781 F.2d 1362 (9th Cir.1996). Flynn letter, p 6. The letter cited Employment Division v. Smith, 494 US 872 (1990), the only US Supreme Court case addressing religious exceptions to generally applicable laws, holding religious free exercise regulation constitutional if

religion is not intentionally burdened, discouraged or prohibited. Flynn letter at p. 5. Justice Scalia held that granting religious free exercise exceptions to generally applicable laws had the negative effect of allowing contempt for laws "of almost every conceivable kind... (including) laws providing equal opportunity for the races." Id. Regardless, CHRO affirmed the exception and denied subject matter jurisdiction precluding Petitoner's rights to access to state courts which demand a CHRO "right to sue letter" to hear discrimination cases under state statutes. EEOC eventually issued a federal right to sue letter and Petitioner pursued his federal claims in those courts.

Petitioner exhausted state remedies to gain state court access, and state and federal constitution due process and equal protection of state discrimination statutes on January 25, 2007 when the Connecticut Supreme Court denied his petition to review the Connecticut Appellate Court decision holding Connecticut administrative law "must recognize the ministerial exception in the enforcement of our employment discrimination statutes." Rweyemamu v. CHRO, 98Conn.App.646, 911 A.2d 319(2006). The Appellate Court further held that employment practices of religious institutions are a form of "religious belief" preserving a state ministerial exception under the state religious freedoms statute. Id at 665.

Prior, Petitioner appealed CHRO to the state administrative appeals court. His April 25, 2005 Complaint of Appeal argued CHRO denial of subject matter jurisdiction based on a ministerial exception violated his US Constitution Fourteenth Amendment rights to due process and equal protection of state and federal employment discrimination laws. See Complaint

of Appeal, Count II, para.7(i), p.4. Petitoner cited Gonzales v Roman Catholic Archbishop, infra, again asserting a rights to investigations and trials to assess religious fraud, collusion or arbitrariness before a "ministerial exception"attaches. See Connecticut Superior Court Appellant's Brief, p. 12, Appendix A. He argued that state case law precluded agencies from finding exceptions to state statutes and that courts, not agencies have authority to decide questions of pure law, which any First Amendment-grounded "ministerial exception" is. See Musante v Notre Dame, No.3:01(CV2352(MR K))(D.Conn. Mar.30, 2004), Appellant's Brief, Appeal of Administrative Agency Decision, p 9: "The applicability of the ministerial exception is a question of law for the court." Id at 4. The Connecticut administrative appeals court held that it must look to federal law for guidance on Connecticut discrimination law, but without benefit of a CHRO investigation or a trial record, concluded Petitioner sought review of purely ecclesiastical matters precluded by the First Amendment, justifying CHRO subject matter jurisdiction denial. See October 19, 2005 Connecticut Superior Court Memorandum of Decision, p 3, Appendix B.

Petitioner then appealed to the Connecticut Appellate Court. In 2006 the Second Circuit Court of Appeals (Connecticut's circuit) decided Hankins v Lyght, 438 F.3d 163 (2nd Cir.2006), which held that the ministerial exception was displaced by the Religious Freedoms Restoration Act (RFRA), which amended the federal Age Discrimination in Employment Act (ADEA). The Second Circuit deemed RFRA the full expression of Congress's intent with regard to age and religious employment issues before federal courts. Petitioner argued by brief and orally that the court therefore must rule the exception

inapplicable to Connecticut because Hankins, held the exception had no basis in state or federal statutory text. See Appellee's Brief Connecticut Appellate Court, pp. 3-6, Appendix A. Petitioner's brief also argued that Connecticut's state's employment discrimination law - The Fair Employment Practices Act (CGS Sec.52-571b) - was to make the Connecticut statute coextensive with the federal act (Title VII), and that federal law, while not defining the state act, guided it.

The Connecticut Appellate Court, without the benefit of an adversarial trial record testing issues of church fraud, collusion or arbitrariness, and like the CHRO, taking no consideration of them, held that Connecticut must recognize the ministerial exception in the enforcement of its employment discrimination statutes because "The constitutional guarantee of the free exercise of religious authority *requires* (emphasis added) secular institutions to defer to the decisions of religious institutions in their employment relations with their religious employees." Rweyemamu v CHRO, 98 Conn.App. 646, 654, 911 A.2d 319 (2006). Further, it held that the employment practices of religious institutions are a form of "religious belief" protected by the state religious freedom statute, which therefore does not displace the ministerial exception in Connecticut. Id at 665.

Petitioner appealed to the Connecticut Supreme Court pleading that the exception as conceived and applied by the Appellate Court denied Petitioner's US Constitution First and Fourteenth Amendment fundamental right to court access; rights protected by the US Constitution pre- amble, Article IV, Section 2, Amendment V, Amendment IX, and Amendment X; and Amendment XIV substantive and procedural due process

and equal protection rights where the exception served to deny a black African priest and all Connecticut ministerial employees labor rights guaranteed by state anti-discrimination statutes. That petition was denied.

REASONS FOR GRANTING THIS PETITION

The Connecticut appellate decision is unique in the nation for sanctioning denial of state employment discrimination statute protections to a black Africa (Tanzanian) Catholic priest under a First Amendment inspired federal common law "ministerial exception". It also appears to be the only state court to have fashioned a state religious freedoms statute ministerial exception not from language of that statute itself, but from the court's views of comments in the statute's legislative history. The draconian impact of this decision is compelling. It denies all state ministerial employees any right to CHRO investigation of their state and federal statutory employment discrimination claims, and any hope that ministerial employees will be heard in state trial courts, which demand grant of CHRO "right to sue" letters before accepting subject matter jurisdiction.

Connecticut's case law now basically holds that churches may lawfully discriminate against their ministerial employees without any democratic check by judicial review of discrimination facts or law. Having exhausted his state court remedies, the Petitioner turns to the US Supreme Court as a court of last resort to vindicate his and all ministers' US constitutional rights to access state administrative processes and state courts to seek such judicial review before application of any religious exceptions from discrimination statutes. The

case presents first impression questions of great public importance not judged by any state supreme court or the US Supreme Court concerning fundamental rights of black African clergy to work and develop religious careers in America without fear of race, color, ethnicity or national origin workplace discrimination.

I. THE FIRST AMENDMENT AND MINISTERIAL EXCEPTION DO NOT PRECLUDE SUBJECT MATTER JURISDICTION IN MINISTERIAL EMPLOYMENT CASES

The "ministerial exception" to employment discrimination statutes has been found in lower state and federal courts to be grounded in either Title VII or the First Amendment. Petruska v. Gannon University, 448 F.3d 615 (Fed.3rdCir.2006). None have found, as the Connecticut Appellate Court did, that the exception flows from the First Amendment without critical analysis of case facts supporting conclusions that religious beliefs, doctrine or internal religious regulation rather than secular intolerance motivated a church's ministerial employment decisions. The First Amendment exception case law holds that facts of religious belief, doctrine and regulation must be adduced from the church employ- er seeking the exception in a trial court of general jurisdiction, not from state agencies and appeals courts. Connecticut (CHRO) thus denied Petitioner his fundamental First and Fourteenth Amendment right to court access by denying him a right to sue letter so he might try facts to establish whether his church's discrimination was lawfully religious or unlawfully secular:

Title I seeks to enforce this prohibition on irrational

disability discrimination. But is also seeks to enforce a variety of other basic constitutional guarantees infringement of which are subject to more searching judicial review. These rights include some. like the right to access the courts in case. that are protected by the Due Process Clause of the Fourteenth Amendment. The Due Process Clause also requires the states to afford certain civil litigants a "meaningful opportunity to be heard "by removing obstacles to their full participation in judicial proceedings." Bodine v Connecticut, 401 US 371 (1971).

The right of access to the courts is an aspect of the First Amendment to petition the government for the redress of grievances. Bill Johnson Restaurants Inc. v. NLRB, 461 US 371. 741 (1983). Accordingly, the Constitution guarantees that prisoners like all citizens have a reasonably adequate opportunity to raise constitutional claims before Impartial judges...Moreover because access to the courts is a fundamental right...government drawn classifications that impose substantial burdens on the capacity of a group of citizens to exercise that right require searching examination of the Equal Protection Clause. Woodford vNGO. No.05-416 (2006).

It is axiomatic that the purpose of judicial inquiry is to adduce facts to establish reasons for fair judgment. Petruska. infra, applied this fundamental concept to the ministerial exception thus:

Where otherwise illegal discrimination is based on religious belief. religious doctrine. or the internal regulations of a church. the First Amendment exempts

> religious institutions from Title VII.. In such cases the restricting a church's freedom to select its ministers would violate the Free Exercise Clause...and (possibly violate) the Establishment Clause...But where a church discriminates for reasons unrelated to religion we hold that the Constitution does not foreclose Title VII suits. Employment discrimination unconnected to religious belief, religious doctrine, or the internal regulation of a church is simply the exercise of intolerance, not the exercise of religion that the Constitution protects. Id at 620.

and Judge Posner has said:

> The ministerial exception, and the hands-off approach more generally, do not place the internal affairs of religious organizations wholly beyond secular jurisdiction...just as the Internal Revenue Service denies tax exemptions that are not bona fide...federal courts cannot always avoid taking stands on a religious question. Tomic v Catholic Diocese of Peoria, 442 F.3rd 1036, 1039 (Fed.7thCir.2006).

CHRO, Connecticut's human rights agency, under Petruska and Tomic tests of the ministerial exception, therefore was not automatically precluded from taking subject matter jurisdiction of Petitioner's original complaint simply because he was a ministerial employee. Rather Petitioner was denied constitutionally protected court access, due process and equal protection of Connecticut's employment discrimination laws when CHRO claimed lack of subject matter jurisdiction without any inquiry of the facts as to whether his church employer had

denied him a job or hired a non-priest administrator to supervise him for illegal secular reasons rather than lawful ones of religious belief, doctrine, or internal religious regulation.

A. Freedom From Employment Discrimination is A Fundamental Right

The Supreme Court has held that freedom from work discrimination is a fundamental right:

> Title VII of the Civil rights Act of 1964...was aimed at creating a workplace free from discrimination, racial and otherwise. That fundamental right is not to be subject to waiver....it would not comport with the congressional objectives behind a statute seeking to enforce civil rights protected by Title VII to allow the very forces that had practiced discrimination to contract away the right to enforce civil rights in the courts. For federal courts to refer to arbitral decisions reached by the same combination of forces that had long perpetrated invidious discrimination would have made foxes guardians of the chickens. Barrentine v Arkansas-Best Freight System. 450 US 728 (1981).

It follows that this Court should not reflexively defer to the majority of lower court First Amendment analyses of a ministerial exception where it is clear that virtually none of these courts have weighed the exception's full impact on ministers' situated similarly to the Petitioner, whose life has been devastated by a church and an agency which without investigation or hearing waived Petitioner's fundamental

discrimination law rights.

This result does not comport with the only US Supreme Court case addressing religious exceptions to generally applicable laws. Employment Division v. Smith, infra, held that government may regulate religious free exercise so long as laws do not intentionally burden, discourage or prohibit religion, which federal and state employment discrimination laws do not, but instead enforce the fundamental right of all to be free of workplace race, color, ethnicity and national origin discrimination.

B. The Connecticut Appellate Court's Theory of Implied Ministerial Exception Cannot Withstand First Amendment or Fourteenth Amendment Scrutiny

The Connecticut Appellate Court held that the ministerial exception is jurisdictional rather than evidentiary. Rweyemamu, supra at 653. This conclusion directly contradicts the analysis of Judge Becker's panel in Petruska, supra, which at the least concluded that the First Amendment requires some basic investigation and judgment of facts and circumstances surrounding ministers' employment discrimination complaints before the First Amendment shields religion's internal affairs. Otherwise, as several exception scholars have noted (see Professor Marci A. Hamilton, God vs. The Gavel, Cambridge U. Press, 2005) the courts essentially support a First Amendment church right to "free exercise of discrimination", which is clearly wrong.

It is also simply not true, at law or by common sense, that any state's administrative law must recognize the ministerial exception in the enforcement of employment discrimination

statutes, and even less true that employment practices of religious institutions are a form of religious belief, as the Connecticut Appellate Court said. Rweyemamu, supra, at 654, 665. The court came to that conclusion by analyzing Connecticut's religious freedoms statute and religious free exercise and not the body of First Amendment and ministerial exception case law precedent existing. The exception was an issue of first impression in Connecticut. Finding no language in the state religious freedoms statutes naming or even hinting at an exception, the court, ostensibly in the First Amendment's interest, searched the statute's legislative history and upon finding a few comments suggesting concerns about how the statute might affect religious employers, a mandatory state exception was "discovered". These efforts, pleasing some churches and legislators no doubt, by judicial decree barred all state ministers from exercising their unequivocal rights to be free from work place discrimination under the compellingly clear statutory language and policy of Connecticut's employment discrimination laws which make no exceptions of any kind. The court did not attempt to reconcile this conflict and made no attempt to reason how the Fourteenth Amendment Equal Protection Clause could be avoided on the facts and law at hand.

Petruska and Tomic infra make clear that the First Amendment need not and indeed may not go so far as to justify no religious regulations intending to protect ministers from discrimination. Therefore at best the Appellate Court's analysis of the exception is incomplete, evinced by facts that the court did not address the Petitioner's First and Fourteenth Amendment rights to court access, due process and equal protection to the states employment discrimination laws at all.

While it is possible that unconscious bias favoring churches might have impacted this result, the result is plainly foreseeable where the court did not have an adversarial hearing or trial record before it fleshing out the facts and law of church and ministerial employment rights and duties in this case.

It is axiomatic that the adversarial process is the heart of our legal system to explicate case facts and develop intellectually honest and accurate records for litigants and courts. Denying subject matter jurisdiction on theories of First Amendment protections for churches versus ministers simply avoids the real issues and conflicts inherent in our law, designed to protect all. Connecticut's view says in church-minister employment disputes ministers have no First Amendment cognizance at all, effectively defining them as church chattel. In Connecticut, home of the famous Amistad case (US v Libellants and Claimant's of the Schooner Amistad, 40 US 518 (1841)) and on facts where the Petitioner is African and was recruited from Africa to work in the US and settled in Connecticut, Petitioner's case raises compelling historical parallels of a past era where our Supreme Court sought full justice. By way of analogy, the Amistad court offers the following insight supporting the Petitioner's concerns:

> If a private ship, clothed with Spanish papers, should enter the ports of the United States, claiming the privileges and immunities, and the rights, belonging the bon a fide subjects of Spain, under our treaties and laws, and she should, in reality, belong to the subjects of another nation, which was not entitled to any such privileges, immunities or rights, and the proprietors were seeking, by fraud, to cover their own illegal acts, under

> the flag of Spain: there can be no doubt, that it would be the duty of our courts to strip off the disguise, and look at the case, according to its naked realities...
>
> ...supposing these African negroes not to be slaves, but kidnapped and free negroes...the conflict of rights between the parties, under such circumstances, becomes positive and inevitable, and must be decided upon the eternal principles of justice...the doctrine must apply, where human life and human liberty are at issue, and constitute the very essence of the controversy. The treaty with Spain never could have intended to take away the equal rights of all foreigners, who should contest their claims before any of our courts, to equal justice...Upon the merits of the case, then, there does not seem to us to be any ground for doubt, that these negroes ought to be deemed free...Amistad, supra, 595-97.

The First Amendment, as Judges Posner and Becker effectively argued in Tomic and Petruska, respectively, supra, likewise does not intend to take away, where human life and liberty are at issue and constitute the very essence of the controversy, the equal rights of all foreigners, or all ministers, who should contest their claims before any of our courts to equal justice. Indeed the Fourteenth Amendment, by its due process standard, is designed to prevent that result by compelling fuller analysis of narrowly drawn First Amendment impacts. This is to say nothing of the Fourteenth Amendments equal protection standard, which at least compelled a review by Connecticut's Appellate Court of whether creating a statutory ministerial exception from that statute's legislative history did not unconstitutionally destroy the Petitioner's state

discrimination law rights. In contradicting the reasoning in Petruska, by relying upon Equal Employment Opportunity Commission v Catholic University of America, 83 F.3d 466, which cited National Labor RelationsBoard v Catholic Bishop of Chicago, 440 US 490 (1979), the Appellate Court clearly erred in concluding that church employment practices can be reviewed only on jurisdictional rather than evidentiary grounds. The First and Fourteenth Amendments command equal consideration and protection of ministers rights under Connecticut and US employment discrimination laws.

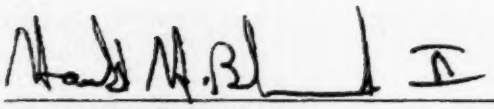
C. Employment Division v Smith Foretold and Precludes the Connecticut Appellate Court's Decision

Smith, supra, the only US Supreme Court case to deal with religious exceptions to generally applicable laws, found religious exceptions to such laws constitutionally offensive. The failure of CHRO, the Connecticut courts, and Petitioner's church to heed Smith has led to a ministerial exception which gives Connecticut churches complete authority to discriminate against ministers in their employment for any reason - exactly the result foreseen and feared by Justice Scalia in Smith. Smith therefore precludes the Connecticut Appellate Court's judgment because it is unconstitutional and should be overruled.

CONCLUSION

The petition for certiorari should be granted.

Respectfully submitted,



Date:4-24-07
Resubmitted:

Harold H. Burbank, II
84 N. Mountain Rd.
Canton, CT 06019
(860) 693-2687
For Petitioner

Certification

I hereby certify that 3 copies of this Petition were US mailed on _____ to the parties as follows:

Charles Krich, Esq.
CHRO
21 Grand Street, Ste. 409
Hartford, CT 06106
Ph. (860) 541-3429
For Respondent Connecticut Commission on Human Rights and Opportunities

Meredith Diette, Esq.
Brown and Jacobson
PO Box 391
Norwich, CT 06360
Ph. (860) 889-3321
For Diocese of Norwich

_____ Date:
Harold H. Burbank, II